

*Resolved,*

**SECTION 1. SENSE OF THE SENATE REGARDING A REFERENDUM ON THE FUTURE POLITICAL STATUS OF PUERTO RICO.**

It is the sense of the Senate that—

(1) the Senate supports and recognizes the right of United States citizens residing in Puerto Rico to express democratically their views regarding their future political status through a referendum or other public reform, and to communicate those views to the President and Congress; and

(2) the Federal Government should review any such communication.

Mr. MURKOWSKI. I thank the Chair.

I move to reconsider the vote and lay that motion on the table.

The motion to lay on the table was agreed to.

**CONSUMER BANKRUPTCY REFORM ACT OF 1998**

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 1301) to amend title II, United States Code, to provide for consumer bankruptcy protection, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3600 TO AMENDMENT NO. 3559

(Purpose: To provide for protection of retirement savings)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. GRAHAM, Mr. DURBIN, and Mr. GRASSLEY, proposes an amendment numbered 3600 to amendment No. 3559.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

[The amendment was not available for printing. It will appear in a future edition of the RECORD.]

Mr. HATCH. Mr. President, I am pleased to offer this amendment co-sponsored by Senator CHARLES GRASSLEY of Iowa on our side and Senator BOB GRAHAM of Florida and Senator DICK DURBIN on the Democrat side, all of whom I would like to thank for their hard work on this important matter.

The Hatch-Graham-Grassley-Durbin pension amendment, among other things, is designed to do the following: Provide a uniform exemption for all types of tax-favored qualified pension plan assets in bankruptcy including Roth IRAs whose status under current bankruptcy law is uncertain, protect retirement assets that are in the process of being rolled over into a new qualified plan, and protect loans from pension funds in bankruptcy.

Under present law, retirement plans which have received a determination letter from the IRS pursuant to section

7805 of the Internal Revenue Code of 1986, as amended, which have not been revoked by a court or by the IRS have, in many instances, been held by the bankruptcy courts not to be qualified plans. This holding allows the trustee for the bankruptcy estate to seize the interest of the bankrupt participant in the plan.

Similarly, if a retirement plan that is not eligible to receive a favorable determination letter but has in all other respects operated under the ERISA provisions and has not had its status revoked by a court or by the IRS, such a plan has been found by the bankruptcy court not to be a qualified plan.

This amendment addresses this problem by providing, 1, that if a plan has received a favorable determination letter that is in effect, the plan is presumed to be exempt from the bankruptcy estate; and, 2, if a plan is not eligible for a determination letter, the plan may be exempt from the bankruptcy estate if there has been no prior determination by a court or the IRS to the contrary and the plan is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986, as amended.

Further, Mr. President, under present law, if there is a direct transfer of an individual's retirement funds by the trustee of a plan exempt from the bankruptcy estate to the trustee of another retirement plan that is exempt from the bankruptcy estate, there is a question as to whether these retirement funds are exempt while in transit. It is possible that a bankruptcy court may hold that such funds are in a "pay status" and thus subject to attachment by the bankruptcy trustee. If there is a distribution of a plan's assets to a distributee and the latter within 60 days transfers them to another qualified plan, ERISA rules do not treat that as a distribution.

There is some question whether these funds in transit are protected from the bankruptcy estate. If a participant is in bankruptcy when either of these types of transit occur, the bankruptcy trustee may be authorized by the bankruptcy court to seize the funds. The result would be to severely reduce or wipe out the participant's retirement funds. This is contrary to sound public policy.

The proposed amendment provides that a direct transfer of retirement funds from one qualified retirement plan to another shall be exempt from the bankruptcy estate. In addition, it provides that eligible "rollover" funds from a qualified retirement plan shall be exempt from the estate if rolled over to another qualified plan within the allowed 60 days of the initial distribution.

Finally, on the issue of qualified plan loans, the amendment provides that qualified plan loans outstanding when the participant is in bankruptcy are not dischargeable, and that payroll deductions used to repay plan loans are not stayed by the court.

The retirement savings of hundreds of thousands of elderly Americans are at risk in bankruptcy proceedings. In 1997, an estimated 280,000 Americans age 50 and older filed bankruptcy. Almost one in five bankruptcy cases involve one or both petitioners who are 50 or older. This amendment has the full support of the AARP, which has stated that:

The accumulation and preservation of retirement funds represents an important national goal.

I could not agree more. With this national goal in mind, I urge my colleagues to support this amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Colorado?

Mr. DURBIN. Mr. President, let me say I am happy to support this amendment. I am happy to be a cosponsor with my friend from Utah, Senator HATCH. I had prepared an amendment on this subject and I am happy to join him in making this a bipartisan effort.

I will not take any time because I know a number of Members have to return to their families this evening, but I concur with him, with the increased number of Americans over the age of 50 filing for bankruptcy, this is a problem which we should address and address directly. It is not only to the benefit of senior citizens who are saving for their own retirement, it is certainly to the benefit of their families who are concerned that they be allowed to live in independence and security in their retirement years. We have traditionally given special consideration to 401(k) plans. This amendment will extend that consideration to IRAs and other vehicles that allow people to put savings away for their future retirement.

I am happy to support this and I am happy to say that the amendment which I offered, and I am sure this one as well, had the support of the American Association of Retired Persons and virtually every major senior citizens group in the country.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Vermont.

Mr. LEAHY. Mr. President, when the distinguished Senator from Illinois first talked about this amendment, I was telling him I thought he had a winner on his hands. I could not imagine anybody opposing it. I was delighted to see the distinguished senior Senator from Utah has also adopted the same idea of the Senator from Illinois. I think it is an excellent piece of legislation.

I suspect it will pass unanimously. I realize that is one of the reasons why it is brought up as a bed-check vote at 8 o'clock at night tonight, because everyone knows the Senator from Illinois has a good idea and the Senator from Utah has a good idea. Those are the kind that we use for bed-check votes.

I should tell the American people, though, notwithstanding that, it is a very valuable piece of legislation and I am delighted to see it and I am going to be very happy to vote for it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Indiana (Mr. COATS), the Senator from Wyoming (Mr. ENZI), the Senator from North Carolina (Mr. HELMS), the Senator from Alabama (Mr. SESSIONS), and the Senator from Alabama (Mr. SHELBY) are necessarily absent.

Mr. FORD. I announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), the Senator from Michigan (Mr. LEVIN), and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote "aye."

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 276 Leg.]

#### YEAS—89

Abraham	Durbin	Lugar
Akaka	Faircloth	Mack
Allard	Feingold	McCain
Ashcroft	Feinstein	McConnell
Baucus	Ford	Mikulski
Bennett	Frist	Moseley-Braun
Biden	Glenn	Murkowski
Bingaman	Gorton	Murray
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grams	Reid
Brownback	Grassley	Robb
Bryan	Gregg	Roberts
Bumpers	Hagel	Rockefeller
Burns	Harkin	Roth
Byrd	Hatch	Santorum
Campbell	Hutchinson	Sarbanes
Chafee	Hutchison	Smith (NH)
Cleland	Inhofe	Smith (OR)
Cochran	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kempthorne	Stevens
Coverdell	Kerrey	Thomas
Craig	Kohl	Thompson
D'Amato	Kyl	Thurmond
Daschle	Landrieu	Torricelli
DeWine	Lautenberg	Warner
Dodd	Leahy	Wellstone
Domenici	Lieberman	Wyden
Dorgan	Lott	

#### NOT VOTING—11

Coats	Inouye	Moynihan
Enzi	Kennedy	Sessions
Helms	Kerry	Shelby
Hollings	Levin	

The amendment (No. 3600) was agreed to.

MODIFICATION OF AMENDMENT NO. 3595, AS MODIFIED

Mr. SANTORUM. Mr. President, I ask unanimous consent that amend-

ment No. 3595, previously agreed to, be modified with the change that I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification follows:

Strike pages 33 through 42.

AMENDMENT NO. 3595

Mr. GRASSLEY. Mr. President, I ask unanimous consent that amendment No. 3595 be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3595) was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

#### PARTIAL-BIRTH ABORTION BAN ACT OF 1997—VETO

Mr. DOMENICI. Mr. President, I rise to speak in support of the overriding of the President's veto on partial-birth abortion. Before I give my comments and observations, I want to look across the Senate to the freshman Senator from Pennsylvania, RICK SANTORUM. I want to say to him that when he spoke on this issue today, and when he spoke on this issue the last time we debated it here, I was never more proud of a Senator than I was to observe him and watch him. I can assure him that even though he may not have won the last time in terms of what we are doing in a veto override, and he may not win this time, there are millions of Americans who have watched him. Whether they were concerned about this issue or not, if they watched for a while, they are concerned right now. You can't ask for anything more.

I read the Senator's wife's book with reference to the problems they had with reference to an abortion they had no control over, an early delivery of a child that died. I am so proud, I can hardly express it tonight.

I want to once more congratulate him for what he has done here on the floor of the Senate. It is not easy, but he did it with great, great style.

Mr. President, this debate is about infanticide. Frankly, I didn't dream that concept up. There is a very distinguished Senator from the State of New York—I know Senator D'AMATO from New York is here and I think he would concur when I say a distinguished Senator named Senator MOYNIHAN—who looked at this problem and it didn't take him very long. We talk all around it. He talked right to it when he said this is infanticide.

So this debate is about humanity and necessity. The procedure of partial-birth abortion, to put it bluntly, is inhumane.

By now, many Americans are uncomfortably aware of the details of partial-birth abortion. They have heard the testimony of doctors who performed this procedure, nurses who witnessed this procedure, and they have most likely seen informational ads or read

descriptions of this procedure. Maybe they have even watched us debate this issue on prior occasions. So I am not going to go through the details of the procedure. I will only say that, at a minimum, it is cruel and inhumane. I find it ironic that our Constitution, via the eighth amendment, protects criminals from cruel and unusual punishment; however, that same amendment does not protect innocent babies when it comes to cruel and inhumane procedures that are known as partial-birth abortions.

Proponents of partial-birth abortion claim that the procedure is rare, occurring only about 500 times a year. However, that is simply not true. The number of partial-birth abortions is closer to between 3,000 and 5,000 a year. In New Jersey alone, at least 1,500 procedures are done each year. Besides being inhumane and quite prevalent, partial-birth abortion is also unnecessary.

Opponents of this legislation argue that partial-birth abortion is necessary to protect the health of the mother. However, most experts say this is also simply not true. According to more than 500 doctors nationwide, who make up what is called the Physicians' Ad Hoc Coalition for Truth, it is never—I repeat never—medically necessary to perform a partial-birth abortion to protect the health or fertility of the mother. A former Surgeon General, who we admire and respect when he sort of agrees with our views but we ignore him when he disagrees, Surgeon General Everett Koop, has also stated that partial-birth abortion is never medically necessary to protect the mother's health or fertility. So amidst all this evidence, how can the opponents of this bill tell the American people that partial-birth abortion is sometimes medically necessary?

If this procedure is not medically necessary, why do we allow it? As I told you, Mr. President, this debate is not about Roe v. Wade or the choice of life. It is not about any of those things. But it is about a baby, a life that is destroyed in a cruel and inhumane way. It is about a life that is unnecessarily destroyed and need not happen. It is for these reasons that I will gladly vote to override the President's veto of the Partial-Birth Abortion Ban Act of 1997.

I suggest tonight to my good friend, the leader of this cause, that if at first you don't succeed, try, try again. If indeed that means that you have already tried three times, then try and try again. What is so patently right will soon prevail.

I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I associate myself with the remarks made by my distinguished friend and colleague, the great senior Senator from New Mexico, Senator DOMENICI. He touched on the eloquence and passion and the rightness and the moral certainty of